

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA,

Case No.: 2:10-cr-00456-APG-VCF

4 Plaintiff

5 v.

**Order for Briefing Regarding Certificate of
Appealability**

6 JASON WILEY,

7 Defendant

8

9 I previously stated on the record that I would grant a certificate of appealability to

10 defendant Jason Wiley regarding my partial denial of his motion under 28 U.S.C. § 2255. *See*

11 ECF No. 273 at 39-40. After I re-sentenced Wiley, I inadvertently failed to issue that certificate.

12 The Ninth Circuit has remanded Wiley’s appeal “for the limited purpose of issuing an

13 order . . . specifying the issues that meet the required showing for a certificate of appealability.”

14 *See* June 30, 2022 Order in Ninth Circuit Case No. 22-10146.

15 A certificate of appealability must be

16 based on a substantial showing of the denial of a constitutional right. 28 U.S.C.

17 § 2253(c)(1)(B). The petitioner must demonstrate that reasonable jurists would

18 find the district court’s assessment of the constitutional claims debatable or

19 wrong. To meet this threshold inquiry, the petitioner must demonstrate that the

20 issues are debatable among jurists of reason; that a court could resolve the issues

21 in a different manner; or that the questions are adequate to deserve encouragement

22 to proceed further.

23 *United States v. Givens*, 268 F. Supp. 3d 1108, 1124 (D. Nev. 2017) (simplified). To properly

frame the issues that will be the subjects of the certificate, the parties are to confer and file either

a stipulation or cross briefs (limited to four pages) specifying the issues they believe meet the

standard. By helping to frame the issues, the Government does not waive its ability to argue on

appeal that the certificate is unwarranted.

1 I HEREBY ORDER the parties to confer and file either a stipulation or cross briefs
2 specifying the issues they believe meet the standard for issuance of a certificate of appealability.
3 The stipulation or briefs (limited to four pages) are due by July 22, 2022.

4 DATED: July 5, 2022.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE